

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEC J. MEGIBOW, M.D., as assignee of Jennie
Rosario, a/k/a Jenny Rosario, 08 CV 519 NDNY,

Plaintiff,

-against-

FRED HAGEN, Chief Benefits Officer,
1199SEIU BENEFIT & PENSION FUNDS, as
duly authorized designee of the BOARD OF
TRUSTEES OF THE 1199SEIU BENEFIT FUND
FOR HEALTH AND HUMAN SERVICE
EMPLOYEES,

Defendant.

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ALVIN K. HELLERSTEIN, U.S.D.J.:

**ORDER DENYING MOTIONS
TO REMAND AND TRANSFER**

09 Civ. 6993 (AKH)

Plaintiff, Alec J. Megibow, alleges that he is a doctor who gave medical services to his patient, Jennie Rosario, and, because she lacked funds to pay for the services, took back an assignment of a claim against her union. As such, Plaintiff succeeded to the rights and limitations of his assignor, Ms. Rosario, and filed a claim against an ERISA fund. Claims under ERISA are within the exclusive jurisdiction of the federal courts. 29 U.S.C. § 1132(e)(1).

Plaintiff's action began as a summons without notice. On or about July 12, 2009, in response to a notice of appearance and demand, Plaintiff filed a complaint. Although not made explicit in the allegations, the complaint states a cause of action under ERISA.

Defendant Fred Hagen is sued in his representative capacity for the 1199SEIU Benefit & Pension Funds. On August 7, 2009, within thirty days of the filing of the complaint, and once Plaintiff's claim had been expressed in allegations of a complaint, Defendant removed the case to this court.

Contrary to Plaintiff's opposition, the removal was timely, see 28 U.S.C. § 1446(b), and appropriate, see 29 U.S.C. § 1132(e)(1).


Plaintiff asks for transfer of the case to the United States District Court for the Northern District of New York, stating that it arises from a settlement of some sort in that jurisdiction. Defendant points out that both Plaintiff's assignor and Defendant are located in New York City, and that Plaintiff is a doctor practicing in Pennsylvania. There has been no showing that the balance of conveniences is outside the Southern District of New York, or that the claim is tied into activities that occurred in Northern New York. Accordingly, the case will remain in this court.

The parties, by counsel, will appear for a status conference on Friday, September 25, 2009, at 10:00 a.m. They are to confer, arrange for initial disclosures, and complete a Case Management Order (to be mailed to them separately) for my approval.

The Clerk shall mark the motion (Doc. #3) as terminated.

SO ORDERED.

Dated: August 27, 2009
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge